IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4584 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

USMANMIYA ABDULKADER SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR GN MANSURI for Petitioner

MR BY MANKAD APP for Respondent No. 1

MR ANIL S DAVE for Respondent No. 2

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 08/12/2000

ORAL JUDGEMENT

The accused of Criminal Case No. 1179 of 1993 which is still pending on the file of the learned Metropolitan Magistrate, Court No.10, Ahmedabad (who will be referred to hereinafter as the learned Magistrate), has, by filing this Criminal Misc. Application under Sec. 482 of the Criminal Procedure Code, 1973 (for short "Cr.P.C.), requested this Court to exercise inherent

powers and quash and set aside the proceedings initiated against him.

2. The facts leading to this present Criminal Misc.Application, in a nut shell, are as follows:

Present applicant who is original accused and present opponent no.2 who is original complainant are related to each other. As per the case of the complainant, original forefather Hafizulla Habibbhai was an owner of four properties bearing City Survey Nos. 927- 928- 931 and 932 situated at Bhikhangali, Jordan Road, Dariyapur, Ward No.1, Ahmedabad. As per the case of the complainant, that Hafizulla Habibbhai had four children. Out of that four, three were the sons and one was daughter. That daughter named Fatmabibi had three sons. Out of that three sons, one son Gulam Rasul Ahmedbhai had three sons. One of them is the present complainant named Iqbal Husain Gulam Rasul. As per the case of the complainant, one of three sons of Hafizulla Habibbhai, son Abdul Kadar Hafizulla had four sons and one daughter and amongst four sons, Usmanmiya Abdul Kadar is cited as the lone accused in this case.

3. As per the case of the complainant, on or about 12th May, 1989, one partition of the properties of original forefather Hafizulla Habibbhai was effected. As per the case of the complainant, the accused in collusion with other near relatives made a false document and that false document was tendered in the office of Sub Registrar, as if it was a genuine document, and thereby, right, title and interest in the properties received in share which may come to the share of the complainant have been ousted. In short, it is the case of the complainant that by using that false partition-deed which is admittedly a registered deed, anyhow the complainant was kept in dark for enjoyment of the properties which may come to his share, and therefore, on or about 5th August, 1993, the complainant lodged one private complaint in the Court of the learned Magistrate. That private complaint came to be registered as Criminal Case No. 1179 of 1993 before the learned Magistrate, and the learned Magistrate, by passing an order below it, took a cognizance against only one accused for the offences punishable under Secs.420 465 - 467 - 468 - 471 read with Sec.114 of the Indian Penal Code.

4. The accused has, by filing this present Criminal Misc. Application under Sec. 482 of Cr.P.C. requested this Court to quash the proceedings initiated against him on the basis of which cognizance has been taken by the

learned Magistrate below that complaint filed by the complainant.

5. I have heard Shri G.N.Mansuri, the learned advocate for the applicant. Shri B.Y.Mankad, the learned APP for the opponent no.1 -State and Ms. Banna Datta, the learned advocate for and on behalf of Shri Anil S. Dave, the learned advocate for the opponent no.2 in detail at length. I have gone through the complaint filed by the complainant as well as the grounds stated in the memo of this present Criminal Misc. Application.

6. As per the complaint, the main root cause for filing the complaint is a partition deed. Shri Mansuri, the learned advocate for the applicant has produced a xerox copy of that partition deed at Annexure : B (Pages: 17 to 45). As per that partition deed, there are about 23 signatories of that partition deed. The partition deed was executed by the persons of four different branches of forefather of Hafizulla Habibbhai. There are 7 persons as members representing the branch of Abdul Rahim Hafizulla who is the first son of original forefather Hafizulla Habibbhai. There are two persons in the second branch representing another son Abdul Khalid Hafizulla son of the original forefather Hafizulla Habibbhai. There are five persons representing the third branch. The persons of third branch are representing Abdul Kadar Hafizulla who is one of the sons of original forefather Hafizulla Habibbhai. That Abdul Kadar Hafizulla had four sons and one daughter and out of that four sons, one is Usmanmiya Abdul Kadar who is the present accused in the criminal case.

7. The persons of fourth branch are represented by Fatmabibi daughter of original forefather Hafizulla Habibbhai. That Fatmabibi has three sons- one is Gulam, second is Ibrahimbhai Mohamedbhai who is at Serial No.1 as person of fourth party and third one named Gulam Ahmed is at Serial No.2 as person of fourth party. Gulam Rasul Ahmedbhai has three sons and out of that three sons, one is Iqbal Husain Gulam Rasul who is the present complainant. In partition deed, name of father of complainant is not shown as person of fourth party. It is the case of the complainant that he is an owner and occupant of two properties bearing Survey Nos. 927/1 and 928 situated in Dariyapur, Ward No.1, Ahmedabad. The complainant has challenged aforesaid partition deed dt. 12th May, 1989 (Annexure : B), wherein four properties have been referred to and out of that four properties, as alleged by the complainant, two properties are in his possession.

8. Shri Mansuri, the learned advocate for the applicant has argued that though the complainant has challenged the partition deed by advancing a case that it is a false document prepared with a view to oust right, title and interest in the properties, the complainant has not shown other signatories to the said partition deed. No reasons have been assigned by Ms. Datta, the learned advocate for and on behalf of Shri Anil S.Dave, the learned advocate for the opponent no.2 as to why this accused alone has been picked up and chosen for prosecution, though it is the case of the complainant that all these 25 persons had prepared a forged and false document.

9. Shri Mansuri has further argued that after aforesaid partition deed was effected, one release deed was executed on or about 20th May, 1989, and in that release deed, there are five persons representing the first party. There are three persons representing second party. Out of THESE three persons who are representing second party, one is the father of the complainant and two others are uncles of the complainant. The name of the accused appears as person at Serial No.5 of first party. By this release deed, two uncles and father of the complainant had given up their rights, titles and interests in two properties bearing Survey Nos. 927/1 and 928 in favour of five persons of the first party (including the accused). The complainant has suppressed the material fact relating to execution of the release deed. Had the complainant mentioned the fact about execution of the release deed in his complaint, possibly the learned Magistrate would not have taken the cognizance against the accused. It is not the case of the complainant pleaded anywhere in the complaint that release deed is a bogus and false document. It is also not the case of the complainant that his father did not sign that document of release deed. Unless and until, father of complainant had received his share in the property under partition, he could not have released his share in favour of accused and his brothers. Therefore, looking to these all facts, as this is a pure question of civil dispute, in no case it can be said that there are ingredients to attract the offences of which cognizance has been taken. Looking to the contents of complaint, and two documents Annexure:B and C produced i.e. partition deed and release deed, this Court is of the view that the learned Magistrate has wrongly exercised its jurisdiction by taking cognizance against the accused. He ought not to have issued the process against the accused. This Court is of the view that as this case

is with regard to civil dispute, it should not be allowed to be fought in the Criminal Court.

10. In view of discussion made hereinabove, this Criminal Misc. Application deserves to be allowed, and the proceeding initiated against the accused in Criminal Case No. 1179 of 1993 which is pending on the file of the learned Metropolitan Magistrate, Court No.10, Ahmedabad is quashed and set aside. Rule is made absolute accordingly. Interim relief granted earlier is made absolute.

Date: 8/12/2000. (H.H.MEHTA,J.)
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